

No. 16223

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United States  
Court of Appeals  
for the Ninth Circuit

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SUN-MAID RAISIN GROWERS OF CALIFOR-  
NIA, a Corporation,

Appellant,

vs.

CALIFORNIA PACKING CORPORATION, a  
Corporation,

Appellee.

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Supplemental  
Transcript of Record

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Appeal from the United States District Court for the  
Southern District of California  
Northern Division.

FILED

MAR 26 1959



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**EXHIBITS ATTACHED TO DEPOSITION OF  
CHARLES GRIFFIN, JR.**

## DEFENDANT'S EXHIBIT No. 1

Resolved that Ralph Brown, the senior vice president, and N. A. Hollister, the secretary of this corporation, be and each of them is hereby authorized and directed to execute and attest on behalf of this corporation and in its name the form of agreement attached hereto between this corporation and California Fruit Growers Exchange.

I hereby certify that the above is a full, true, and correct copy of the resolution passed by the Executive Committee of the Board of Directors of California Packing Corporation at its meeting on Monday, September 18, 1950, and the same is in full force and effect and has not been revoked.

I further certify that the bylaws of said California Packing Corporation expressly provide that during the intervals between the meetings of the Board of Directors of said corporation, said Executive Committee of the Board of Directors shall possess and may exercise all the powers of said Board of Directors in the management and direction of the operations of said corporation.

In Witness Whereof I have hereunto set my hand and affixed the seal of this corporation this 18th day of September, 1950.

/s/ N. A. HOLLISTER,  
Secretary.

Resolved, that H. A. Lynn the president, and Paul S. Armstrong the secretary of this corporation, be and each of them is hereby authorized and directed to execute and attest on behalf of this corporation and in its name the form of agreement attached hereto between this corporation and California Packing Corporation.

I hereby certify that the above is a full, true and correct copy of the resolution duly passed by the board of directors of California Fruit Growers Exchange at a regular meeting thereof duly and regularly convened and held on Wednesday, September 20, 1950, and that the said resolution is in full force and effect and has not been revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of this corporation this 20th day of September, 1950.

[Seal]      /s/ PAUL S. ARMSTRONG,  
Secretary.

This Agreement, dated this 20th day of September, 1950, by and between California Packing Corporation, a New York corporation, with its principal office and place of business in the City and County of San Francisco, State of California, hereinafter referred to as "Calpack," and California Fruit Growers Exchange, a California corporation, with its principal office and place of business in the City of Los Angeles, State of California, hereinafter referred to as "Exchange";

Witnesseth:

Recitals

(a) Whereas there is now in effect between the parties a written agreement dated October 7, 1915, a copy of which, marked "Exhibit A," is attached hereto and by reference incorporated as a part hereof, which relates to the ownership by Calpack of the trade-mark "Sun-Kist" with respect to certain products and the ownership by Exchange of the trade-mark "Sunkist" for certain other products; and

(b) Whereas it is the desire of the parties hereto that said written agreement Exhibit A be forthwith terminated; and

(c) Whereas Calpack has agreed to sell, transfer and assign all its right, title and interest in and to said trade-mark "Sun-Kist," together with that part of the good will of the business of Calpack connected with the use of and symbolized by the mark, but not the good will connected with the use of and symbolized by any other trade-mark used in its business, and all domestic and foreign registrations relating to said trade-mark, a list of such registrations being attached hereto marked "Exhibit B" and by reference incorporated as a part hereof, and Exchange has agreed to purchase the same:

Now, Therefore, in consideration of the premises and the mutual promises of the parties hereinafter set forth, the parties agree as follows:



1. Calpack hereby sells, assigns and transfers to Exchange its entire right, title and interest in and to the trade-mark "Sun-Kist" and registrations thereof, together with that part of the good will of the business of Calpack connected with the use of and symbolized by the mark, but not the good will connected with the use of and symbolized by any other trade-mark used in its business. In effectuation of this sale, assignment and transfer Calpack hereby agrees to make, execute and deliver an assignment in the form attached hereto and marked "Exhibit C," and such other individual assignments, in substantially the same form, as may be requested by Exchange, with such formal changes as may be required by the laws or regulations of the jurisdiction in which such assignment is to be recorded, transferring to Exchange each and every registration of the trade-mark "Sun-Kist," state, federal and foreign, in which Calpack has or purports to have an interest, including, but without limitation to, each and every of the registrations listed in the aforesaid Exhibit B. Said assignments shall be in proper form for recordation in the respective countries issuing said registrations in accordance with the respective laws of said countries.

All of the aforesaid shall be done at the sole cost and expense of Calpack and without cost or expense to Exchange.

2. Calpack covenants and agrees that from and after the date hereof, except as in this Article 2

permitted, it will not in any way or manner use the trade-mark "Sun-Kist" or any colorable imitation thereof, or any trade-mark incorporating the work "Kist" or any combination thereof, or any similar word, or any illustration having such implication, or any representation, in part or in whole, of a sunburst, in connection with the sale or distribution of any product, or in or upon any carton, box, label, circular, advertisement, sign, billhead or letterhead, or in any slogan.

Exchange agrees that Calpack shall have such time as may be necessary within which to complete the distribution of its products labeled, or to be labeled, under the "Sun-Kist" mark, packed from the 1950 or prior crops.

3. Calpack covenants and agrees that it will at any time subsequent to the date hereof, on request of Exchange or its duly authorized agent, deliver to Exchange up to fifty (50) copies of each and every available carton, box, label, circular, advertisement, sign, billhead, letterhead and slogan on which appears the trade-mark "Sun-Kist" or the word "Kist" or any combination thereof, or any illustration having such implication, or any representation, in part or in whole, of a sunburst.

Calpack further covenants and agrees that it will at any time after January 1, 1951, on demand of Exchange or its duly authorized agent, deliver to Exchange or destroy, as may be directed by Exchange or its duly authorized agent, all cartons,

boxes, labels, circulars, advertisements, signs, bill-heads, letterheads, plates, or any other material on which appears the trade-mark "Sun-Kist" or any colorable imitation thereof, or any trade-mark, or slogan incorporating the word "Kist" or any combination thereof, or any similar word, or any illustration having such implication, or any representation, in part or in whole, of a sunburst, except the goods referred to in the second paragraph of Article 2 hereof.

All of the aforesaid shall be without cost or expense to Exchange.

4. Calpack covenants and agrees that it will, at any and all times, upon the request of Exchange or its duly authorized agent, promptly deliver to Exchange the originals or, at Calpack's option, duly authenticated copies of all letters, correspondence, documents and agreements of every kind and character relating to the adoption of the trade-mark "Sun-Kist" and relating to all controversies and proceedings with others respecting the use of the trade-mark "Sun-Kist" or any colorable imitation thereof, or any trade-mark incorporating the word "Kist" or any combination thereof.

Calpack further covenants and agrees that it will, upon the request of Exchange or its duly authorized agent, promptly deliver to Exchange for its use each and every of its files respecting each and every suit, opposition or interference in which the trade-mark "Sun-Kist" was in any way involved or con-

cerned, and each and every of its files with respect to each and every registration and application for registration of the trade-mark "Sun-Kist," and each and every of its files respecting any abandonment by Calpack of or any failure to renew any registration of "Sun-Kist," or any cancellation proceedings respecting the same, and each and every of its files respecting the adoption and use of the trade-mark "Sun-Kist" or of any trade-mark or slogan in which the word "Kist" or any similar word or words, or illustrations having such implication, or any representation, in part or in whole, of a sunburst appears.

All of the same is to be furnished without cost or expense to Exchange.

5. Calpack covenants and agrees that it will, at the request of Exchange or its duly authorized agent, produce for use by Exchange all evidence and facts known, or which may become known to it relating to the adoption and use by Calpack and its predecessor of the trade-mark "Sun-Kist," and will produce such of its employees having knowledge of the facts, or having the custody or control of any evidence concerning the said adoption and use of the trade-mark "Sun-Kist," to testify respecting such facts in each and every interference and opposition and in each and every suit and proceeding in which said trade-mark "Sun-Kist" may now be or become involved or concerned.

All of the aforesaid to be done without cost or expense to Exchange other than reasonable cost of



travel, hotel and subsistence incurred by any employee of Calpack requested by Exchange.

6. Nothing herein contained shall in anywise be construed as a guarantee or warranty on the part of Calpack as to the validity of its trade-mark "Sun-Kist" or the registrations therefor or as requiring Calpack to transfer or convey any physical assets.

7. The said agreement of October 7, 1915, is hereby terminated, cancelled and of no further force or effect.

Each of the parties hereto does, for itself and for its successors and assigns, remise, release and forever discharge the other, its successors and assigns, and any and all of the officers, directors, agents, attorneys and employees, or any one of them, of and from all claims of every kind, nature and character whatsoever against the other arising directly or indirectly out of or connected with said agreement dated October 7, 1915.

8. Exchange covenants and agrees to pay Calpack the sum of one million two hundred fifty thousand dollars (\$1,250,000) in the following installments:

Two hundred fifty thousand dollars (\$250,000) on or before November 1, 1950;

Two hundred fifty thousand dollars (\$250,000) on November 1, 1951;

Two hundred fifty thousand dollars (\$250,000) on November 1, 1952;

Two hundred fifty thousand dollars (\$250,000) on November 1, 1953; and

Two hundred fifty thousand dollars (\$250,000) on November 1, 1954;

as and for the full purchase price and compensation for said trade-mark and the rights hereunder conferred and the termination of the agreement of October 7, 1915, and all of the conditions, rights and obligations of this agreement.

Deferred payments are not to bear interest.

In Witness Whereof, the parties hereto have duly executed this agreement by their respective officers thereunto authorized as of the day and year first hereinabove written.

[Seal]                      CALIFORNIA PACKING  
CORPORATION,

By /s/ RALPH BROWN,  
Vice President.

Attest:

/s/ N. A. HOLLISTER,  
Secretary.

CALIFORNIA FRUIT  
GROWERS EXCHANGE,

By /s/ H. A. LYNN,  
President.

Attest:

/s/ PAUL S. ARMSTRONG,  
Secretary.

## Exhibit A

Whereas, The J. K. Armsby Company, a corporation of the State of Illinois, has used "Sun-Kist" as its trade-mark in connection with goods of the class hereinafter referred to as "groceries," comprising dried fruits, raisins, canned goods and many other articles sold by wholesale grocery houses, but not perishable fresh fruit or citrus fruit by-products; and said Company has registered its said trade-mark in the United States Patent Office in connection with many of the goods upon which it has used the same as aforesaid;

And Whereas, the California Fruit Growers Exchange, a corporation of the State of California, has used "Sunkist" as its trade-mark in connection with perishable fresh fruit, and particularly citrus fruit, and registered the same in the United States Patent Office as its trade-mark for many of the goods aforesaid in connection with which it has used the same;

And Whereas, in connection with the application upon which registration was made by the California Fruit Growers Exchange the Commissioner of Patents decided in substance that no interference existed between the uses or registrations of the mark aforesaid and it now appears that for several years the uses of "Sunkist" aforesaid have both continued on a very extensive scale, embracing very large distribution, accompanied by very large expenditures by both parties in popularizing their respective goods without material conflict or misconception and with the result that when used in

connection with groceries "Sun-Kist" in fact now indicates in the trade and to the public that the goods are the goods of The J. K. Armsby Company and when used in connection with perishable fresh fruit "Sunkist" now indicates in the trade and to the public the goods of the Exchange;

And Whereas, the parties hereto desire to record their understanding and agreement concerning the uses of said trade-mark with a view to avoiding any and all differences or conflict.

Now, Therefore, This Memorandum Witnesseth, that The J. K. Armsby Company and the California Fruit Growers Exchange recognizing the facts aforesaid have agreed and hereby agree as follows:

1. The California Fruit Growers Exchange recognizes the exclusive right of The J. K. Armsby Company to use its said trade-mark "Sun-Kist" on dried fruits, raisins, canned goods and other articles ordinarily sold by wholesale grocery houses, but not upon perishable fresh fruit or the by-products of citrus fruits.

2. The J. K. Armsby Company recognizes the exclusive right of the California Fruit Growers Exchange to use its said trade-mark "Sunkist" on oranges, lemons, grapefruit and all other perishable fresh fruit and upon citrus fruit by-products.

3. The J. K. Armsby Company and California Fruit Growers Exchange will continue to use "Sunkist" only upon the highest grade and quality of their respective goods and each will endeavor by lawful means to prevent the use of "Sunkist" in connection with goods of low grade or inferior



quality, although the goods may not be identical in kind with the respective goods of the parties hereto, if the goods are of a kind such that confusion may arise concerning their origin, so as to impair the value of "Sunkist" as a trade-mark to either The J. K. Armsby Company or the California Fruit Growers Exchange.

It is understood and agreed that the provisions hereof shall be applicable to and govern the rights and acts of the parties in all markets and countries into which their goods are or may be shipped.

In Witness Whereof, each of said corporations has hereunto caused its corporate name to be subscribed and its corporate seal to be affixed by its President and Secretary thereunto duly authorized, all done as of this 7th day of October, 1915.

THE J. K. ARMSBY  
COMPANY,  
(A Corporation.)

By J. K. ARMSBY,  
Its President.

By E. R. ARMSBY,  
Its Secretary.

CALIFORNIA FRUIT  
GROWERS EXCHANGE,  
(A Corporation.)

By F. Q. STORY,  
Its President.

By H. VAN VLECK,  
Its Asst. Secretary.



EXHIBIT B

<u>COUNTRY</u>	<u>REG. NO.</u>	<u>DATE</u>	<u>EXPIRES</u>
*U. S. Trade Mark Registration	67,277	Jan. 28, 1908	Jan. 28, 1948
"	67,278	Jan. 28, 1908	Jan. 28, 1968
"	67,478	Feb. 4, 1908	Feb. 4, 1948
"	96,082	April 7, 1914	April 7, 1954
"	96,385	April 21, 1914	April 21, 1954
"	96,770	May 5, 1914	May 5, 1954
"	96,929	May 12, 1914	May 12, 1954
"	99,835	Sept. 22, 1914	Sept. 22, 1954
"	101,121	Nov. 17, 1914	Nov. 17, 1954
"	101,439	Dec. 15, 1914	Dec. 15, 1954
"	102,354	Feb. 9, 1915	Feb. 9, 1955
"	104,684	June 8, 1915	June 8, 1955
"	113,219	Oct. 10, 1916	Oct. 10, 1956
"	114,322	Dec. 12, 1916	Dec. 12, 1956
"	281,093	March 10, 1931	March 10, 1951
"	281,094	March 10, 1931	March 10, 1951
"	301,278	Feb. 21, 1933	Feb. 21, 1953
"	304,659	July 11, 1933	July 11, 1953
**U. S. Label Reg.	16,770	Feb. 4, 1913	
**"	16,771	Feb. 4, 1913	
**"	16,772	Feb. 4, 1913	
**"	16,773	Feb. 4, 1913	
**"	16,774	Feb. 4, 1913	
**"	16,775	Feb. 4, 1913	
**"	16,776	Feb. 4, 1913	
**"	16,777	Feb. 4, 1913	
**"	16,778	Feb. 4, 1913	
**"	16,779	Feb. 4, 1913	
**"	16,780	Feb. 4, 1913	
**"	16,896	April 1, 1913	
**"	16,897	April 1, 1913	
**"	17,715	May 26, 1914	
**"	17,751	June 2, 1914	
**"	17,752	June 2, 1914	
**"	17,753	June 2, 1914	
**"	17,754	June 2, 1914	
California State Registration	5,047	May 9, 1911	
"	5,553	April 27, 1912	
"	6,003	March 5, 1913	

Foreign Registrations

*Argentina	92,212	Sept. 21, 1925	Sept. 21, 1935
Australia	15,338	July 23, 1913	July 23, 1955
Austria	55,518	March 6, 1913	Being reinstated
Barbados	130	June 4, 1919	Unlimited
Belgium	46,240	Oct. 3, 1913	Unlimited
	(Renewal of)		
	(No. 18,145)		



<u>COUNTRY</u>	<u>REG. NO.</u>	<u>DATE</u>	<u>EXPIRES</u>
*Bolivia	A-675 (Renewal of No. C-129)	June 26, 1919	June 23, 1939
***Burma	397/19	May 2, 1919	Unlimited
*Brazil	29,040 (Renewal of No. 4,349)	Nov. 9, 1914	Feb. 24, 1945
*Canada	79/19516	March 23, 1914	March 23, 1939
"	78/19184	Dec. 15, 1913	Dec. 15, 1953 or Dec. 15, 1963
"	90/21862	July 5, 1916	July 5, 1956 or July 5, 1966
"	184/40661	Oct. 2, 1926	Oct. 2, 1951
*Ceylon	2,034	Nov. 4, 1919	April 29, 1933
*Chile	37,911	June 11, 1926	June 11, 1936
* " "	37,912	June 11, 1926	June 11, 1936
*China (Hong Kong)	120/1919	Aug. 20, 1919	April 15, 1937
China (Nanking)	13,123	Oct. 30, 1930	Oct. 29, 1950
China (Manchuria)	12	1919	Unlimited
China (Shanghai)	C.H.15,604 Cons.1,823	Sept. 1914	Unlimited
China (Tientsin)	C.H. 273 Cons. 18	April 17, 1919	Unlimited
*Costa Rica	1,089	April 15, 1919	April 15, 1934
Cuba	33,059	Nov. 10, 1917	Nov. 9, 1962
Czechoslovakia	91,751	June 2, 1920	March 5, 1953
Denmark	219/1913	March 29, 1913	March 29, 1953
Dutch East Indies	26,302	Sept. 19, 1916	Aug. 13, 1956
*Egypt	262	Feb. 9, 1935	Feb. 9, 1945
***Federated Malay States		June 23, 1919	
Finland	11,278	Sept. 13, 1929	June 22, 1950 Being renewed
*Fiji Islands	1/140	Aug. 13, 1919	May 6, 1933
France	54,322	April 22, 1918	Dec. 17, 1962
***French Indo China		April 11, 1920 Dec. 30, 1930	
Germany	171,051	Dec. 22, 1918	Dec. 30, 1942 Being renewed
Great Britain	374,638	May 22, 1917	Sept. 8, 1958
" "	547,364	March 21, 1934	Dec. 30, 1961
*Guatemala	1,740	Feb. 15, 1922	Feb. 15, 1932
* " "	1,741	Feb. 15, 1922	Feb. 15, 1932
*India	1,051	Sept. 26, 1918	New appl'n. filed
"	Appl'n. 141,962	Jan. 11, 1950	Being processed
*Upper India	110/19	April 28, 1919	New appl'n. filed
Ireland	43,365	Feb. 26, 1934	June 3, 1961
Italy	85,610	Nov. 21, 1913	Sept. 29, 1963
Japan (Korea)	105,374	July 14, 1919	July 14, 1959
Japan	186,707	Nov. 22, 1926	Being reinstated and renewed
"	186,811	Nov. 26, 1926	Being reinstated and renewed
*Jugoslavia	602	Oct. 3, 1921	Oct. 3, 1941
*Mexico	16,368	March 25, 1919	March 17, 1939
Netherlands	65,252	Sept. 1, 1933	Sept. 1, 1953
Newfoundland	743	March 7, 1919	Unlimited
*Nicaragua	2,050	Dec. 9, 1929	Dec. 9, 1939
Norway	28,322	April 15, 1940	April 14, 1960
Pakistan	Appl'n. 9,364	Dec. 31, 1949	Being processed
*Panama	732	March 9, 1921	March 9, 1941
*Peru	666 (266/19)	June 10, 1919	Sept. 4, 1939
*Philippines	1,661	Oct. 16, 1914	Oct. 16, 1944
Philippines	Serial 827	Nov. 26, 1948	Being processed



<u>COUNTRY</u>	<u>REG. NO.</u>	<u>DATE</u>	<u>EXPIRES</u>
*Poland	8,655	Oct. 5, 1925	Oct. 5, 1935
* "	9,567	Nov. 9, 1925	Nov. 9, 1935
*Porto Rico	1,118	April 8, 1921	April 8, 1941
*Portugal	25,718	July 13, 1922	July 13, 1932
* "	25,719	July 13, 1922	July 13, 1932
* "	27,811	July 19, 1922	July 19, 1932
* "	28,947	April 12, 1923	April 12, 1933
*Salvador	542	Oct. 24, 1919	Oct. 24, 1934
*Santo Domingo	661	May 24, 1919	May 24, 1929
*Siam	A-81	Feb. 2, 1932	Oct. 1, 1941
*South Africa	378/1919	April 6, 1920	
***Straits Settlements		May 30, 1919	
Sweden	43,976	Oct. 16, 1913	Sept. 17, 1954
Switzerland	98,682	Sept. 20, 1940	Sept. 20, 1960
*Uruguay	21,514	Nov. 22, 1920	Nov. 21, 1940
	(Renewal of No. 9,814)		
*Venezuela	2,640	Oct. 15, 1919	Oct. 15, 1939

\*Expired registration.

\*\*Label copyright in name of The J. K. Armsby Co.

\*\*\*Publication of claim of ownership rather than a registration.





EXHIBIT C

Calpack hereby sells, assigns and transfers to Exchange its entire right, title and interest in and to the trade-mark "Sun-Kist" and the registration thereof, No. . . . ., together with that part of the good will of the business of Calpack connected with the use of and symbolized by the mark, but not the good will connected with the use of and symbolized by any other trade-mark used in its business.

[Endorsed]: Filed February 3, 1955.

